

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:09-CV-474-BO

DR. EDWARD HORTON,)
)
Appellant,)
)
v.)
)
CAROLINA WINE COMPANY, et al.,)
)
Appellees.)
_____)

ORDER


This matter is before the Court on Appeal from the Opinion and Order of the Bankruptcy Court. For the reasons set forth herein, this appeal is DISMISSED for failure to prosecute.

A district court may dismiss for want of prosecution on its own motion. *Reizakis v. Loy*, 490 F.2d 1132, 1135 (4th Cir. 1974). In determining whether to dismiss a matter for failure to prosecute, “the power to prevent delays must be weighed the sound public policy of deciding cases on their merits.” *Id.* First, the Court must weigh the responsibility on the Appellant. *McCargo v. Hedrick*, 545 F.2d 393 (4th Cir. 1976). Here, Appellant’s counsel withdrew on the grounds that the Appellant had not contacted his counsel regarding proceeding with the appeal or paid the costs of appeal. Appellant’s counsel certified that a copy of that Motion was served on the Appellant. In granting counsel’s Motion to Withdraw, this Court warned the Appellant that the matter would be dismissed within 30 days if no brief was filed or cause for the delay was not shown. Therefore, this Court concludes that a clear record of delay exists and that the Appellant had ample time and warning to argue his case and avoid dismissal.

Second, the Court must consider the amount of prejudice to the Appellees caused by the delay. *Id.* In the instant case, the Bankruptcy Court required Appellee RBC Bank to segregate the wine labeled as Dr. Horton's and segregate the proceeds of the sale of that wine. Therefore, this Court concludes that the Appellees are prejudiced by the delay in resolution of the underlying Bankruptcy case and the proper disposition of the funds held pending the outcome of this appeal.

In sum, in light of the Appellant's record of delay and prejudice to the Appellees, this matter is hereby DISMISSED for failure to prosecute.

SO ORDERED, this 12 day of July, 2010.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE